

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHARLES AND KRISTINA JENNINGS,

Plaintiffs,

v.

BANKUNITED, et. al.,

Defendants.

3:15-cv-00334-MMD-WGC

ORDER

Re: Doc. # 1

Before the court is an application to proceed in forma pauperis in this matter (Doc. # 1) and motion for appointment of counsel (Doc. # 1-3).

I. APPLICATION TO PROCEED IN FORMA PAUPERIS

A person may be granted permission to proceed in forma pauperis if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915; *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating that this provision applies to all actions filed in forma pauperis, not just prisoner actions).

In addition, the Local Rules of Practice for the District of Nevada provide: "Any person, who is unable to prepay the fees in a civil case, may apply to the Court for authority to proceed *in forma pauperis*. The application shall be made on the form provided by the Court and shall include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

"[T]he supporting affidavits [must] state the facts as to [the] affiant's poverty with some particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (quoting *Jefferson v. United States*, 277 F.2d 823, 725 (9th Cir. 1960)). A litigant need not "be

1 absolutely destitute to enjoy the benefits of the statute." *Adkins v. E.I. Du Pont De Nemours &*
2 *Co.*, 335 U.S. 331, 339 (1948).

3 Here, Plaintiffs have an application to proceed in forma pauperis setting forth the
4 earnings information for Kristina "Kris" Jennings, as well as a statement of her assets, liabilities
5 and persons whom depend on her for support. According to Ms. Jennings, her take-home wages
6 are \$900.25 bi-weekly or \$1,800.50 per month. (Doc. # 1 at 1.) She identifies monthly expenses
7 in the amount of approximately \$910, and states that she has four minor children dependent on
8 her for support. (*Id.* at 2.) She is behind on her utility payments, however, her other debts were
9 discharged in her bankruptcy case. (*Id.*) Based on the application, the court finds it is unlikely
10 Plaintiff could pay the \$350 filing fee and her application to proceed in forma pauperis is
11 granted.

12 Charles Jennings, however, did not submit an application to proceed in forma pauperis.
13 The filing fee must be paid unless *each* plaintiff files his or her own application to proceed in
14 forma pauperis and is subsequently granted leave to proceed in forma pauperis. Charles Jennings
15 is directed to file his own application to proceed in forma pauperis or pay the \$350 filing fee and
16 \$50 administrative fee within fourteen days of the date of this Order.

17 **II. MOTION FOR APPOINTMENT OF COUNSEL**

18 A motion for appointment of counsel was filed with the application to proceed in forma
19 pauperis. (Doc. # 1-3.) The following are cited as reasons that counsel should be appointed in
20 this case: (1) Plaintiffs allege facts under which meritorious claims *might* be proved and belief
21 this case will result in protracted litigation; (2) the case involves a mortgage fraud claim and the
22 issue of the foreclosure of real property with accompanying breach of contract claims and issues
23 relative to a bankruptcy proceeding involving Plaintiffs; (3) they will request discovery and
24 expert witnesses may be utilized; (4) Plaintiff's cannot afford an attorney, and they assert
25 allegations regarding the actions taken by their former attorneys in connection with the loan
26 modification and mediation process and bankruptcy proceeding; (5) the issues are complex;

1 (6) they are not skilled in the law; (7) the defendants have counsel; and (8) appointing an
2 attorney will serve the ends of justice because the court system will not be clogged with persons
3 who do not know what they are doing.

4 Generally, a person has no right to counsel in civil actions.” *Palmer v. Valdez*, 560 F.3d
5 965, 970 (9th Cir. 2009) (citation omitted); *see also United States v. \$292,888.04*, 54 F.3d 564,
6 569 (9th Cir. 1995). 28 U.S.C. § 1915, however, governs in forma pauperis proceedings and
7 provides that the court may request an attorney to represent a person who cannot afford counsel.
8 28 U.S.C. § 1915(e)(1). Such an appointment is within the court’s discretion, and should only be
9 done when “exceptional circumstances” are present. *Palmer*, 560 F.3d at 970 (citation omitted);
10 *Agyeman v. Corrs. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004) (quoting *Wilborn v.*
11 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)). In determining whether these circumstances
12 exist, “a court must consider ‘the likelihood of success on the merits as well as the ability of the
13 petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved.’”
14 *Palmer*, 560 F.3d at 970 (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir 1983));
15 *Agyeman*, 390 F.3d at 1103. “Neither of these considerations is dispositive and instead must be
16 viewed together.” *Palmer*, 560 F.3d at 970 (citation omitted).

17 Ms. Jennings has not addressed the likelihood of success on the merits, other than to say
18 that they have alleged facts which *might* prove to be meritorious. This is a far cry from
19 demonstrating a *likelihood* of success on the merits. Moreover, the motion for appointment of
20 counsel and complaint reveal that Ms. Jennings is capable of articulating her claims *pro se*.
21 While the complaint asserts many claims, the court is faced with a large number of complaints
22 asserting similar claims and does not deem the allegations surrounding the alleged impending
23 foreclosure to be particularly complex. While the parties will certainly engage in discovery, that
24 is true of most every civil action. It is argued that Plaintiffs may need to utilize an expert witness,
25 but they do not highlight how an expert witness might be utilized in this case. While Plaintiffs
26 cannot afford an attorney and are not skilled in the law, these are the circumstances that confront
27 nearly every *pro se* litigant in this district, and the court cannot conclude this case rises to the
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1 level of “exceptional circumstances” on those bases. For these reasons, the motion for
2 appointment of counsel is denied.

3 **III. CONCLUSION**

4 (1) Plaintiff Christina Jennings’ application to proceed in forma pauperis (Doc. # 1) is
5 **GRANTED**. Plaintiff Christina Jennings is permitted to maintain this action without the
6 necessity of prepayment of fees or costs or the giving of security therefor. This order granting in
7 forma pauperis status does not extend to the issuance of subpoenas at government expense.

8 (2) Plaintiff Charles Jennings shall file an application to proceed in forma pauperis on his
9 own behalf or pay the \$350 filing fee and \$50 administrative fee within **FOURTEEN DAYS OF**
10 **THE DATE OF THIS ORDER**. Plaintiff is advised that a failure to file an application to
11 proceed in forma pauperis or pay the \$350 filing fee and administrative fee within the time
12 period specified above may result in dismissal of the action as to Charles Jennings.

13 (3) The Clerk shall **FILE** the Complaint (Doc. # 1-1) and Civil Cover Sheet (Doc. # 1-2),
14 Motion for Appointment of Counsel (Doc. # 1-3), and the Verified Emergency Petition for
15 Temporary Restraining Order and/or Preliminary Injunction Against Unlawful Retainer (Doc. #
16 1-5).

17 (4) The Clerk shall **ISSUE** to Plaintiff Christina Jennings a summons for each named
18 defendant. Plaintiff Christina Jennings has not requested that service be effectuated by the U.S.
19 Marshal; therefore, she is responsible for initiating service of a summons and the complaint upon
20 each of the defendants in accordance with Rule 4(c) of the Federal Rules of Civil Procedure.
21 Plaintiff may be able to serve the defendants by mail with the summons and complaint, but *only*
22 if the defendants agree to service by mail pursuant to the process for requesting a waiver of
23 service described in Federal Rule of Civil Procedure 4. If Plaintiff wishes to make service by
24 mail she must complete both Form 398 (Notice of Lawsuit and Request for Waiver of Service)
25 and Form 399 (Waiver of Service of Summons) and follow the directives of Rule 4 for
26 accomplishing service in this manner. Plaintiff is reminded that, pursuant to Federal Rule of
27 Civil Procedure 4(m), service must be accomplished within 120 days of the date of this Order.
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1 (5) From now on, Plaintiff shall serve upon the defendants, or if an appearance has been
2 entered by counsel, upon the attorney for the defendant, a copy of every pleading, motion or
3 other document submitted for consideration by the court. Plaintiff shall include with the original
4 paper filed with the court a certificate stating the date that a true and correct copy of the
5 document was served, indicating the manner of service, to the defendant or counsel for the
6 defendant. The court may disregard any paper which has not been filed with the clerk or the
7 court, and any paper that fails to include a certificate of service.

8 (6) The motion for appointment of counsel (Doc. # 1-3) is **DENIED**.

9 (7) The court reserves its right to screen and dismiss the complaint or any portion of the
10 complaint if it determines at any time that any part of the action is frivolous or malicious, fails to
11 state a claim on which relief may be granted or seeks monetary relief against a defendant who is
12 immune from such relief pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(iii).

13 **IT IS SO ORDERED.**

14 Dated: June 24, 2015.

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16 WILLIAM G. COBB
17 UNITED STATES MAGISTRATE JUDGE
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